PERUMAL ANGAMUTHU

v.

SOWNTHARAKOWRY SHANMUGAM

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: B-02-218-1996]
3 SEPTEMBER 1999

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Leave to appeal - Whether necessary - Appeal against decision of High Court giving vacant possession and arrears of rent - Whether plaintiff's claim for possession had a value attached - Whether claim made under O. 89 of Rules of the High Court 1980 - Whether originating summons filed under O. 28 - Whether appeal came within s. 68(1) of Courts of Judicature Act 1964 or Practice Direction No 2 of 1996*

This was an appeal from the decision of the High Court giving vacant possession and arrears of rent to the respondent. The only issue for determination here emanated from the respondent's preliminary objection, *ie*, that the appeal was incompetent because no leave had been obtained for it. The respondent's contention was that since the judgment of the High Court included an order for arrears of rent, thereby attaching a value to the matter, leave to appeal became necessary. The appellant's reply was that since the respondent's original claim was only for vacant possession with no value attached to it, which meant that it must have been filed under O. 89 of the Rules of the High Court 1980 ('the RHC'), leave to appeal was not required.

Held:
Per Shaik Daud Ismail JCA

[1] As the respondent's originating summons clearly stated that it was filed pursuant to O. 28 of the RHC, the claim could not be regarded as having been made under O. 89 thereof.

[2] Since the High Court had (by making an order for arrears of rent) attached a value to the matter now appealed against, leave to appeal was essential. This was not a matter which came within the exceptions to s. 68(1) of the Courts of Judicature Act 1964 or within the ambit of Practice Direction No 2 of 1996.

[Appeal struck out.]

Case(s) referred to:
Cheow Chew Khoon v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)
Rules of the High Court 1980, O. 28, O. 89

Other source(s) referred to:
Practice Direction No 2 of 1996

For the appellant - Murali Achan (K Kulasegaran with him); M/s K Kulasekar & Assoc
For the respondent - Gurbachan Singh; M/s Bachan & Kartar

[Appeal from High Court, Shah Alam; Originating Summons No: 24-644-95]

Reported by Gan Peng Chiang

JUDGMENT

Shaik Daud Ismail JCA:

The appeal is from the decision of the Shah Alam High Court which had entered judgment in favour of the respondent for vacant possession of premises No. 5, Jalan Gasing, Petaling Jaya and arrears of rental at RM1200 per month from 1 August 1991, until handing over of vacant possession. It is not in dispute that the respondent is the registered owner of the said property and had rented it out to the appellant.

At the outset of the appeal, Mr. Gurbachan Singh learned counsel for the respondent informed the court that he has a preliminary objection to raise. He conceded, however, that he failed to give notice of this to learned counsel for the appellant. Since there were no objections, we allowed the preliminary objection to be raised.

Learned counsel for the respondent questioned the competency of the appeal as no leave to appeal had been obtained by the appellant. He contends that although this matter originally involves the question of tenancy and there was no value attached to it, the High Court in its judgment made an order for arrears of rent, thereby attaching a value to the matter, and since no leave had been obtained, the appeal is incompetent.

Learned counsel for the appellant argued that since the respondent's claim was only for vacant possession, it must be taken that it is filed under O. 89 and as such no leave to appeal is required. He further contends that the claim has no value attached to it.

We are unable to agree with the contention that we ought to treat this claim as if it was made under O. 89. When an application is not clear or makes no mention under what order of the Rules of the High Court, it is made, then we should look at the substance of the application as was held in *Cheow Chew Khoon (t/a Cathay Hotel) v. Abdul Johari bin Abdul Rahman* [1995] 4 CLJ 127; [1995] 1 MLJ 457. In that case the originating summons did not specify the order under which it was made but in the present case the originating summons clearly mentioned that it was made under O. 28 of the Rules of the High Court 1980. Therefore we cannot treat it as if it was made under some other order.

We are of the view that since the High Court had attached a value to the matter appealed against, by making an order for arrears of rent, leave to appeal is required unless it comes within any of the exceptions in s. 68(1) of the Courts of Judicature Act 1964, and Practice Direction No. 2 of 1996. Since no leave had been obtained the appeal is not competent and we ordered it to be struck off with costs.